IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R.No.51 of 1992
Date of decision: 9.11.2006

The Commissioner of Income Tax, Jalandhar

..Applicant
through
Dr. N.L.Sharda, Advocate

v.

M/s Guru Nanak Mercantile Co. Jalandhar

..**Respondent**
through
Nemo

CORAM:

Hon'ble Mr.Justice Ajay Kumar Mittal
Hon'ble Mr.Justice Rajesh Bindal

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Rajesh Bindal, J.

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short, `the Tribunal'), arising out of its order dated 26.7.1990 in I.T.A. No. 808/ASR/89, in respect of assessment year 1983-84:

> "Whether on the facts and in the circumstances of the case, the Tribunal is right in law in cancelling the penalty imposed at Rs. 27,073/- under Section 271(1)(c) of the Income-tax Act, 1961 by the Assessing Officer and confirmed by the Dy. CIT (Appeals)?

Briefly, the facts, as noticed by the Tribunal in the statement of the case, are that the assessee-firm was engaged in the manufacture and sale of charcol presses and pipe fittings. Return for the assessment year in question was filed on 7.9.1983, declaring a loss of Rs. 15,191/-. During the course of assessment, certain expenses on account of foreign travel and weighted deduction claimed thereon under Section 35(b) of the Income-tax Act, 1961 (for short, `the Act') were disallowed and the income was determined accordingly. In proceedings under

Section 271(1)(c) of the Act, penalty of Rs. 27,073/- was levied vide order dated 30.12.1987. In appeal, the Deputy Commissioner of Income-tax (Appeals) upheld the order of penalty. However, the Tribunal set aside the orders passed by the authorities below by holding that in the facts and circumstances of the case, no finding for concealment of tax could possibly be recorded against the assessee. Accordingly, the penalty was ordered to be deleted.

Learned counsel appearing for the Revenue has not been able to point out any material on record which could enable this Court to hold that the findings recorded by the Tribunal are not in conformity with the material on record or are, in any way, perverse. In our view, on appreciation of the material on record and holding that the claim made by the assessee was bonafide, the Tribunal has correctly accepted the appeal of the assessee by deleting the penalty. Accordingly, the question referred is answered against the Revenue and in favour of the assessee by holding that the Tribunal was right in cancelling the penalty imposed under Section 271(1)(c) of the Act.

The reference is disposed of in the manner indicated above.

(Rajesh Bindal)
Judge

(Ajay Kumar Mittal)
Judge

9.11.2006
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